

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**BROOKLYN BOTTLING OF MILTON,  
NEW YORK, INC.**

**Plaintiff,**

**-v.-**

**ECUABEVERAGE CORPORATION,**

**Defendant,**

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**Civil Action No.**

**07-CV-08483-AKH**

**DECLARATION OF WALTER CERVANTES  
IN SUPPORT OF DEFENDANT ECUABEVERAGE CORPORATION'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON COUNTS I, II AND VI OF THE AMENDED COMPLAINT**

I, WALTER CERVANTES, hereby declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that:

1. I am vice-president of Ecuabeverage Corporation ("Ecuabeverage") and am authorized to act on behalf of Ecuabeverage in connection with proceedings pertinent to the above-captioned trademark infringement litigation brought by Brooklyn Bottling of Milton, New York, Inc. ("Brooklyn Bottling") against Ecuabeverage.

2. I am fully knowledgeable of, and oversee, the day-to-day business operations of Ecuabeverage.

3. Attached to this *Declaration* as “Exhibit 1” is a true and accurate reproduction of a representative beverage label used by Ecuabeverage in its day-to-day marketing of its beverage goods.

4. Attached to this *Declaration* as “Exhibit 2” is a true and accurate copy of U.S. Trademark Registration No. 1,474,395, of which I understand Brooklyn Bottling claims ownership, and which is being asserted by Brooklyn Bottling against Ecuabeverage in support of Brooklyn Bottling’s claims of federal trademark infringement.

5. I understand the registered trademark allegedly owned by Brooklyn Bottling, as shown by U.S. Trademark Registration No. 1,474,395, to be “TROPICAL PURO SABOR NACIONAL” for the goods recited as “SOFT DRINKS AND FLAVORED SYRUPS USED IN THE PREPARATION OF MAKING SOFT DRINKS.”

6. Ecuabeverage does not use – and has never used – the Spanish language word “NACIONAL” on any of its beverage goods labels, or any labels for any goods, or in any manner whatsoever, in the sale or marketing of any of Ecuabeverage’ goods, without exception, in the United States.

7. I am fluent in both the English and Spanish languages.

8. I have read and understand that U.S. Trademark Registration No. 1,474,395 states that: “NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE ‘PURO SABOR,’ APART FROM THE MARK AS SHOWN.”

9. The Spanish wording “PURO SABOR,” to which no exclusive claim is made in U.S. Trademark Registration No. 1,474,395, is literally translated into English as “PURE FLAVOR.” Ecuabeverage does use the descriptive, non-protectable words, “PURE” and “FLAVOR” in both English and the Spanish equivalents on its beverage labels.

10. The Spanish wording “NACIONAL” is literally translated into English as “NATIONAL.” Ecuabeverage does not use – and has never used – either the English word “NATIONAL, or the Spanish language equivalent “NACIONAL,” on its beverage goods labels, or in the marketing or sale of any of its goods, in any manner whatsoever, without exception, in the United States.

11. Ecuabeverage does not use – and has never used – the complete composite term “TROPICAL PURO SABOR NACIONAL,” or its English language equivalents, “TROPICAL PURE NATIONAL FLAVOR” or “TROPICAL PURE FLAVOR NATIONAL,” in connection with the sale or marketing of its goods in the United States.

12. Ecuabeverage does not use – and has never used – the complete composite term “PURO SABOR NACIONAL,” or its English language equivalents, “PURE

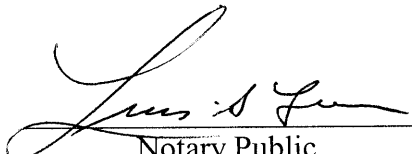
NATIONAL FLAVOR” or “PURE FLAVOR NATIONAL,” in connection with the sale or marketing of its goods in the United States.

I declare under penalty of perjury that the foregoing is true and correct.

  
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Walter Cervantes

Sworn to Before Me This

8th Day of March, 2008.

  
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Notary Public

**LUIS A. TORRES**  
Commissioner of Deeds  
City of New York Number 3-6567  
Certificate Filed in Bronx County.  
Commission Expires Oct 1 2009

**CERTIFICATE OF SERVICE**

I, EDWIN D. SCHINDLER, hereby certify that I served a true, and complete, copy of *Declaration of Walter Cervantes in Support of Defendant Ecuabeverage Corporation's Motion for Partial Summary Judgment on Counts I, II and VI of the Amended Complaint*, upon the following counsel for Plaintiff Brooklyn Bottling of Milton, New York, Inc., via First-Class Mail, postage pre-paid:

Jeffrey E. Jacobson  
Bruce E. Colfin  
JACOBSON & COLFIN, P.C.  
60 Madison Avenue, Suite 1026  
New York, New York 10010

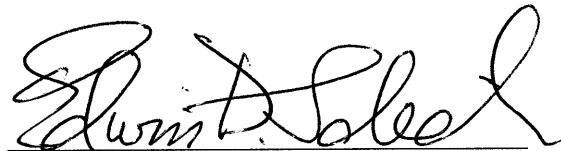
and

via E-Mail at:

jeffrey@thefirm.com

bruce@thefirm.com

on March 14, 2008.

A handwritten signature in black ink, appearing to read 'Edwin D. Schindler', written over a horizontal line.

Edwin D. Schindler (ES-7882)  
*Attorney for Defendant*